

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6255 OF 2006

Balkrishna S. Pathare	.. Petitioner
Versus	
Hemant R. Sane & Ors.	.. Respondents

Mr.P.M.Arjunwadkar i/b.G.S.Godbole for petitioner
Mr.A.A.Garge for respondent Nos. 1 to 3

CORAM	:	S.C.DHARMADHIKARI, J.
DATE	:	14th June 2007.

P.C.

. Petitioner - original defendant is aggrieved by the order dated 22nd March 2006 passed below Exh.37 in Special Civil Suit No.195 of 2001 which has been instituted by the respondent.

2. Both sides do not dispute that the application for amending written statement Exh.37 was moved by the petitioner defendant belatedly.

The petitioner while contesting the claim of respondent in a suit which is filed for Probate of a Will and on contest being converted and numbered as such, presented his written statement earlier i.e. on 27th August 2002. Thereafter the issues were drawn. After issues were drawn and affidavit of the plaintiff No.3 was filed in evidence, application Exh.37 was filed. Application sets out the proposed amendments and inter alia, seeks to implead one Shridhar Nilkanth Sabnis, Advocate as party to the suit. There are allegations made against this Advocate. Respondent plaintiff opposed the application for amendment of the written statement on the ground that the application is belated and made after the trial has commenced, which is impermissible, after the necessary amendments to the C.P.C. being brought into effect from 1st July 2002.

3. That apart, various contentions raised by amendment have nothing to do with the controversy

between the parties to the suit. The pleas arise out of professional relations between the petitioner and the Advocate. For all these reasons, the amendment be rejected is the stand of the respondents - original plaintiffs.

4. The impugned order proceeds on the basis that the suit was filed original for Probate/ Letters of Administration of will of the deceased, Sunita Pathare. Upon contest, after the caveat was filed, the matter was converted and numbered as Regular Civil Suit. Thereafter, the present written statement is sought to be amended not only incorporating additional grounds of challenge to the claim of plaintiff but introducing counter claim as well. Delay of five years has not been explained. Further, the amendment proposed changes the nature of the controversy between parties. It is not as if the petitioner has no remedy to proceed against either the Advocate or others, but, that is

independant of the present suit.

5. Having perused the petition and the annexures thereto including the application for amendment, reply and the impugned order, I am of the opinion that delay by itself is not fatal. This is not a case where one can conclude straight away that the trial has commenced, therefore, the bar contemplated by amended C.P.C. would apply automatically. In the facts and circumstances of this case and considering that the contest is alive, nothing precludes petitioner from amending the Written Statement. More so, when ultimate relief remains the same viz., dismissal of the suit. Therefore, on the ground of delay and change of cause of action, application for amendment could not have been rejected.

6. Even otherwise, applying liberal principles which are still applicable, despite

amendments to the C.P.C., for allowing amendments, the instant application ought to have been allowed, even if it introduces a counter claim. It is not as if the merits of the matter have to be gone into and decided finally at the stage of permission to amend the pleadings. In this view of the matter the written statement can be permitted to be amended and even counter claim be introduced thereunder. The application (Exh.37) stands allowed to this extent.

7. However, the application (Exh.37) stands rejected to the extent of joinder of Mr.Shridhar Nilkanth Sabnis, Advocate as party to the suit. Petitioner is permitted to incorporate all averments in the application for amendment, save and except permission to implead Advocate concerned as party defendant. The rejection of this request does not mean that petitioner is without any remedy either against the Advocate or otherwise during the course of proceedings before

the trial court. It would always be open for the parties to summon the said Advocate, if the need so arises, as their witness, in the present suit.

8. Considering that the application for amendment has been filed belatedly, it is allowed subject to payment of cost quantified at Rs.1000/- to be paid within a period of two weeks from today to the respondents or their Advocate in the trial court. Similarly, it would be open for petitioner to carry out amendments to the pleadings/written statements within a period of three weeks from the date hereof. The order under challenge is set aside and stands substituted to the above extent. Rule is made absolute accordingly. At the joint request of parties and considering the age of petitioner - original defendant, trial court shall endeavour and dispose of the Special Suit as expeditiously as possible and in any event by 31st January 2008.

(S.C.Dharmadhikari, J)